

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 57 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
JHON HAMILTON CHRISTIAN

Versus

WANKAWALA TRADERS

-----  
Appearance:

MR PRASHANT G DESAI for Petitioner

MR RR MARSHALL for Respondent No. 1

MR BY MANKAD, ADDL. PUBLIC PROSECUTOR for Res. No. 5

-----  
CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 28/09/98

ORAL JUDGEMENT

Prosecution Inspector of Surat Municipal Corporation has preferred this appeal against the order of acquittal recorded by Judicial Magistrate First Class, Surat in Municipal Case No. 802/85 whereby the accused were tried for offences under Octroi Rules 13 (1) (3), 13 (2), 28 (1), 29 (2)(A) and Stand Orders 6 and 7 read with the Bombay Provincial Municipal Corporations Act of 1947.

Respondents No. 1 to 4 (hereinafter referred to as accused No. 1 to 4) imported goods within the limits of Surat Municipal Corporation. At the time of import, declaration was filed, declaring the value of the goods at Rs.6878-16. An amount of Rs.180/- paid at Udhna Jakha by way of octroi was required to be added. At the time of import, Exh. 36 was filed indicating total value of the goods at Rs.7180/- along with declarations which are Exh. 36 and 37.

It appears that Inspector, suspecting that the price which is disclosed is not genuine, opened one of the containers and took out the imported goods. It appears that Talcum Powder was imported by paying Rs.6-15 per tin to Hemali Cosmetics, Navsari, who was the manufacturer of the goods in question. However, on the tin, price mentioned was Rs.18-40 and the accused was called upon to produce the bill.

It appears that the accused through their lawyer pointed out that the manufacturer was getting benefit of notification No. 140/83 dated 5.5.1983 exempting the goods manufactured by it on the goods worth Rs.5 lakhs. It appears that as per the averments made in the notice, the Municipality also inquired into the matter. Partner of Hemali Cosmetics also pointed out the relevant material indicating the excise duty, production cost, profit, manufacturing cost etc. It is pointed out that excise duty is 110% and if that is taken out, the price would be too less.

Defence has also produced Exh. 57 a letter dated 29th July 1985 written by Lakme Limited, to show that Lakme Limited markets the goods manufactured by Hemani Cosmetics and it is open for the manufacturer to supply the materials directly to the distributors with the printing on the container "marketed by Lakme Limited".

It is required to be noted that the difference is only of Rs.173/-. Suits are pending in the trial Court with regard to the recovery of the amount. The octroi department is of the view that there is no question of recovery but the accused are required to pay octroi on the correct price of the goods.

The trial Court, on appreciation of evidence, has given benefit of doubt. Having heard the learned advocates and the Additional Public Prosecutor, there is nothing to show that the view taken by the trial Court is perverse or that the view could not have been taken on

the evidence on record. Apart from that the amount involved is negligible. Moreover, the matter is pending before the civil Court. Hence I do not find any reason to interfere with the order passed by the trial Court. The appeal is dismissed.

csm./ -----